

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re PAYMENT CARD INTERCHANGE : MDL No. 1720(MKB)(JAM)
FEE AND MERCHANT DISCOUNT :
ANTITRUST LITIGATION : Civil No. 05-5075(MKB)(JAM)
:
This Document Relates To: : RULE 23(b)(3) CLASS COUNSEL'S
ALL ACTIONS. : MONTHLY REPORT REGARDING THIRD-
PARTY ENTITIES
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I. INTRODUCTION

This is the tenth monthly report regarding third-party claims filers following the Court's request.

Rule 23(b)(3) Class Counsel ("Class Counsel") and Epiq continue to receive communications regarding third parties. This month, there were 31 new communications received by Epiq and multiple communications received by Class Counsel. Calls received via the toll-free number are tracked and reported to Class Counsel from Epiq. Class Counsel also directly receives calls and emails regarding third parties that are followed up on immediately. Additionally, Class Counsel regularly searches online using various keywords in an attempt to monitor what is a fluid situation. A number of contacts this month came through the conflicts process. More than 75 class member contacts have been received since the last reporting period through the email address set to handle conflicts (conflicts@paymentcardsettlement.com). These contacts are generally class members who were confused or had questions regarding their record being in conflict with a third-party filer. In total, 14 different companies or law firms were noted in these communications.

In this report, Class Counsel describes current issues related to third parties.

II. UPDATE REGARDING MILBERG

A. Class Counsel's Update

Following the Court's July 13, 2024 Order, Class Counsel has sought to make a referral regarding Ms. Laverne Hallak to law enforcement. On July 15, 2024 and July 17, 2024, Class Counsel left detailed messages on the U.S. Attorney's intake phone line. Class Counsel requested a return call. After not receiving a response to the voicemails, Class Counsel sent a letter to the U.S. Attorney on July 22, 2024. The letter was hand delivered and sent via overnight mail. In the letter, Class Counsel requested an acknowledgement of receipt of the referral. Class Counsel received an email from the U.S. Attorney's office on July 25, 2024, acknowledging receipt of Class Counsel's letter.

Further, Milberg has confirmed that the firm has paid Epiq the agreed \$25,000 related to this matter.

B. Status Report from Milberg Coleman Bryson Phillips Grossman, PLLC Pursuant to Court's Order Dated July 13, 2024 (ECF No. 9354)

Pursuant to the Court's Order dated July 13, 2024 (ECF No. 9354), the law firm of Milberg Coleman Bryson Phillips Grossman LLC ("Milberg") submits the following status report regarding any pending claims submitted to Epiq:

As of the date of this filing,

- **Withdrawn:** Milberg has withdrawn 3,120 claims submitted to Epiq. Reasons range from lack of response to request for affirmation of Milberg's representation, lost but resolved conflicts, or lacking transaction and interchange fee data to which claimants did not respond to Milberg's attempts to cure.
- **Approved:** Epiq has approved 1,125 claims submitted by Milberg. Of those, 124 have been filed under the Research Request process within the claim portal. Milberg intends to file the remaining 1,001 approved claims over the next 2 weeks plus any other conflicted claims that resolve timely.
- **Deficient:** Epiq has identified 33 deficient claims submitted by Milberg. Milberg has otherwise processed all deficiencies that have been flagged for resolution. Milberg is waiting for Epiq to publish a deficiency notice for the remaining 33 claims that have been flagged as deficient.
- **Conflicts:** Milberg has been notified of 758 remaining conflicts for claims it submitted to Epiq. Milberg has resolved a number of these conflicts between it and other third-party filers and informed Epiq of same. However, Epiq has not updated some of this information in its portal yet. Of the 758 claims, Milberg has 145 conflicts with merchants who submitted on their own behalf. Milberg has made several attempts to contact these merchants to no avail and will be withdrawing these claims. Milberg is attempting to resolve an additional 38 conflicts with merchants with whom it has been in contact, but if Milberg is unsuccessful in resolving those conflicts, it will withdraw those claims as well. There are 434 outstanding unresolved conflicts between Milberg and other third-party filers which are in various stages of resolution discussions.

Lastly, Milberg does not intend to register any additional claims with Epiq going forward.

III. CURRENT ISSUES

A. National Processing Alliance Inc. Class Member Complaint

On July 23, 2024, Class Counsel was alerted to a call Epiq received regarding an unknown third party at the time. A class member in Florida contacted Epiq after receiving a call purporting to be from the official settlement administrator. The class member became suspicious after receiving a call that stated that the merchant's potential claim and award amount based on their monthly averages would entitle them to receive between \$5,000-\$6,000 for their award. However, in order to be eligible for this award they needed to have an auditor come to their place of business. Also, since their award was purportedly over \$3,000, they would fly their auditor out to speak with the owner of the business who would need to sign on behalf of the business in order to "file the claim." The class member, believing this to be legitimate, scheduled a day for the "auditor" to arrive. Upon hanging up, the class member immediately had second thoughts leading her to call Epiq's toll-free number. Class Counsel spoke with the class member on July 24, 2024, and confirmed that Epiq does not send auditors, and that it appeared this class member had received false and misleading information.

The class member only had a phone number to contact the caller. Class Counsel left a message at that number after receiving a recorded response that all agents were busy. On the morning of July 24, 2024 multiple calls to the number that appears to be based in Florida said to "stay on the line to be connected," but rang without answer. An internet lookup for the number did not provide any results. However, on the afternoon of July 24, 2024, Class Counsel received a call from Thomas Fuhrman of National Processing Alliance Inc.¹ Mr. Fuhrman was agitated on the call when Class Counsel began to relay the issues raised by the class member; he insisted that his company follows all the rules and that "you can't do a single thing to me." He ended the call by hanging up. Class Counsel called Mr. Fuhrman back and attempted to explain the details that the class member had relayed. He questioned Class Counsel's position at her firm and stated that he did

¹ Based on the company's website, it appears it is primarily a payment processor. See <https://nationalprocessingalliance.com/>.

not believe Class Counsel had any authority. He also denied any of the information relayed by the class member was true. He stated his company provides claims-filing services for free and that all calls are recorded. When asked whether he uses the settlement as a means by which he then sells processing services, he stated that he did not have to answer. Class Counsel stated a report was due to the Court in two days and that this matter would be reported. Mr. Fuhrman became increasingly agitated and again hung up on Class Counsel.

Class Counsel is concerned that merchants are being misled by this entity, but are not sure how to gain an understanding as to what exactly is being conveyed to merchants and whether the disclaimers are present as it appears much of the communication is by telephone and not in writing.

It is Class Counsel's suggestion that the company be ordered to show cause that they are including the Court-mandated disclaimers in all solicitations, that they are not purporting to be from the official settlement administrator, and that they are providing only accurate and truthful information.

B. Law Firm Providing Incorrect Information

Class Counsel was alerted that a posting on LinkedIn from a group that had contracted with a law firm to provide claims-filing services to members failed to include the required disclaimers and had several incorrect statements. Class Counsel contacted the firm and the law firm had the post taken down within 24 hours. At this time, no further action is suggested in regards to this specific issue.

C. Other Complaints Regarding the Law Firm

Class Counsel was alerted to certain YouTube videos that were from an online web services advertising entity (AddTraffic) that had partnered with the law firm Betz & Baril and an entity called ClickFunds. These videos contained numerous false and misleading statements regarding the settlement, including statements regarding purported numbers of claims filed, expected payouts and incorrect information regarding the filing process. The disclaimers were also not present on the materials. On the day that Class Counsel was alerted to these videos, a letter was sent to Betz & Baril, AddTraffic (the advertising company), and ClickFunds demanding that the videos be taken

down and that the law firm contact Class Counsel immediately to discuss the matter. Letters were received from the advertising company, from Betz & Baril and from ClickFunds. Each vowed to remove the offending content right away, with the advertising company sending a new draft video for review. The law firm has also agreed to send a letter to the approximately 1,700 clients that may have signed up following receipt of misleading information, explaining that false and/or misleading information had been given and that any merchant that signed up for the firm's services could cancel, no questions asked. Class Counsel has reviewed the proposed communication and the letter appears to properly inform Class Members of their right to file on their own. It also appears the entities have in fact removed the questionable videos and the law firm has indicated that they are no longer working with ClickFunds or the advertising company.

Because of the seriousness of these matters, Class Counsel has offered Betz & Baril the opportunity to address these issues in this Report. The firm's statement is below.

D. Betz & Baril's Statement

It has come to our attention that various marketing materials done on Betz & Baril's behalf may have false and misleading information. To that end, we immediately had those materials pulled from the web. In addition, we were informed one of our agents may have suggested to a client knowing when and/or how much a merchant's payout will be. We have gone back to all of our agents/employees and reminded them that we can't know what the payout will be until the pro rata percentage is issued nor can we know when payment will be issued and if anyone is caught saying otherwise it will lead to immediate termination from Betz & Baril. We are also sending out a corrective email to 1700 plus clients in question letting them know they can withdraw their contract with us at any time, no questions asked. Lastly, Betz & Baril has requested that all Visa/MC internet marketing cease on our behalf and to have everything pulled ASAP but no later than 7/28/24. Betz and Baril takes the advertising rules of this court very seriously and we have done the following corrective measures as well as working with class counsel to try and prevent these issues from arising again.

E. Serendipity Funding Recovery Group, LLC Issues

On July 23, 2024, Class Counsel was alerted to an email sent to a class member from a group called “GetYouProcessing” that lacked any of the Court-ordered disclaimers and claimed that the company had already recovered more than \$140 million for clients. The email led to the website for Serendipity Funding Recovery Group, LLC (“Serendipity Funding”). On that site, there is a video that also fails to include the Court-ordered disclaimers and wrongly suggests that in order to file a claim directly with the administrator, class members are required to gather all data from 2004-2019. Class Counsel wrote to both Serendipity Funding and the person who sent the email on July 23, 2024. Class Counsel noted the various false and/or misleading statements and also noted the lack of disclaimers. Class Counsel requested that corrections be made and that notice go out to those that may have signed up following receipt of incorrect information. Class Counsel requested a response by July 25, 2024. On July 24, 2024, counsel for Serendipity Funding responded to Class Counsel. Counsel for Serendipity Funding stated that all videos had been taken down. Counsel for Serendipity did not address the statements made by the “GetYouProcessing” agent but stated that going forward all email templates must be submitted to counsel for prior approval.

IV. OUTREACH TO THIRD PARTIES BY EPIQ

As Class Counsel previously reported, since August 18, 2023, Epiq has been performing specific outreach efforts to known third-party claims filers.

As of July 15, 2024, Epiq has been in communication with 279 third-party filers, law firms, and non-traditional bulk filers following the outreach that took place on August 18, 2023. Of those 279 third parties, Epiq has received client lists from 142 third-party claim filers claiming representation of 10 or more claimants. Those third parties claim total representation of 445,978 Tax Identification Numbers (“TIN”). It should be noted filers representing 2 or more claimants claim total representation of 446,435 TINs. These client lists also include multiple rows for a single TIN, and multiple rows that lack TINs or have invalid TINs (alphabetic characters, too few or too many digits). Several third-party claims filers have combined their documentation into a single .pdf that covers multiple clients, so the true number is likely higher than the current document count can

substantiate. Work continues, including the development of processes to efficiently handle the expected increase in third-party claims.

V. CONCLUSION

Class Counsel will continue to apprise the Court regarding issues with third-party claims filers via monthly reports and will bring urgent matters to the Court's attention via letter or other means should the Court wish a different method to be used. The next monthly report will be filed on August 27, 2024.

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